

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 29, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP468

Cir. Ct. No. 2009CV9147

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CORY GILMORE,

PLAINTIFF-APPELLANT,

V.

GREEN TREE SERVICING, LLC,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS R. COOPER, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Cory Gilmore appeals from an order of the circuit court that granted Green Tree Servicing, LLC's motion for summary judgment and dismissed Gilmore's claims. Gilmore contends that a void mortgage and an assignment of interest allow him to recover money paid to Green Tree in

satisfaction of a foreclosure judgment. Gilmore's position is premised on a misunderstanding of applicable law. We therefore reject his arguments and affirm the order.

¶2 In November 1998, Gilmore and his mother Dorothy acquired property as joint tenants. In April 1999, Dorothy borrowed \$14,000 from Green Tree, securing the loan with a mortgage on the property. Gilmore's name and signature appear on the mortgage but are not notarized, and Gilmore denied signing the mortgage. Approximately two weeks later, a quitclaim deed prepared by an attorney that ostensibly transferred Gilmore's interest in the property to Dorothy was recorded by the register of deeds. Gilmore's signature, notarized and authenticated, are on the deed, but Gilmore also denied signing the deed.¹ Dorothy died in March 2004. In April 2005, Gilmore filed suit against those who had falsified his signature on the quitclaim deed, plus his brother Tyrone Joiner, though all of the defendants in that case were ultimately dismissed.

¶3 In August 2006, Green Tree commenced a foreclosure action of its mortgage, naming Dorothy and Gilmore as defendants. Gilmore defended on the grounds that the mortgage was invalid in its entirety because he had not signed it. In October 2006, Joiner signed and recorded a transfer affidavit, purporting to transfer Dorothy's estate, including the property she shared with Gilmore, to himself. In January 2007, the circuit court in the foreclosure case, the Honorable Patricia D. McMahon presiding, signed a judgment of foreclosure against only Dorothy's undivided one-half interest in the property and declared Gilmore's

¹ At all times relevant, Gilmore was incarcerated, so it would have been impossible for him to sign the mortgage or to sign the quitclaim deed in front of the notary.

interest unencumbered. In April 2007, Gilmore appealed the judgment of foreclosure, but the appeal was ultimately dismissed.

¶4 After the circuit court entered the judgment of foreclosure but before the sheriff's sale, Joiner secured a third-party mortgage on the property and satisfied Green Tree's judgment against Dorothy's interest in the property. Green Tree asked the circuit court to reopen the foreclosure judgment and dismiss the case; the circuit court did so. Green Tree then asked this court to dismiss the pending appeal as moot. Gilmore's attorney did not respond and we dismissed the appeal.² See ***Green Tree Servicing, LLC v. Gilmore***, No. 2007AP930, unpublished slip op. & order (WI App Aug. 14, 2007).

¶5 In October 2007, Gilmore sued Joiner and the new mortgagee. Gilmore ultimately obtained a release of the mortgage lien, with the circuit court, the Honorable Timothy G. Dugan presiding, declaring the quitclaim deed and transfer affidavit void and deeming Gilmore the sole owner of the property. Gilmore then settled his claims against Joiner in exchange for an assignment of Joiner's claims against Green Tree.

¶6 Pursuant to that assignment, Gilmore brought the underlying action against Green Tree in June 2009. Gilmore sought to recover the money that Joiner had paid to satisfy the foreclosure judgment against Dorothy's interest. Gilmore's theory was that Dorothy's mortgage was void *ab initio* because Gilmore, as joint tenant, did not sign it; therefore, Green Tree is not allowed to keep the money

² Gilmore also appealed the order vacating the judgment of foreclosure and dismissing the circuit court action. We dismissed that appeal because Gilmore was not aggrieved by the dismissal and because of continuing mootness. See ***Green Tree Servicing, LLC v. Gilmore***, No. 2007AP1961, unpublished slip op. & order at 3 (WI App Jan. 4, 2008).

Joiner paid to satisfy a void mortgage. Gilmore also brought tort claims, asserting that Green Tree acted maliciously against him. The circuit court, the Honorable Thomas R. Cooper presiding, concluded that Gilmore could not recover on the mortgage issue and that the tort claims were barred by the statute of limitations. Accordingly, the circuit court granted Green Tree's motion for summary judgment and dismissed Gilmore's claims. Gilmore appeals.

¶7 We review summary judgments *de novo*, using the same methodology as the circuit court. See **Cole v. Hubanks**, 2004 WI 74, ¶5, 272 Wis. 2d 539, 681 N.W.2d 147. That methodology is well-established and we will not repeat it here. See, e.g., **Lambrecht v. Estate of Kaczmarczyk**, 2001 WI 25, ¶¶20-24, 241 Wis. 2d 804, 623 N.W.2d 751. It suffices to say that a party is entitled to summary judgment when there are no disputed issues of material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2011-12).³

¶8 Gilmore, in arguing that Dorothy's mortgage was void, relies on WIS. STAT. § 706.02(1)(d), which provides that a mortgage "shall not be valid unless evidenced by a conveyance that" among other things "[i]s signed by or on behalf of each of the grantors[.]" Gilmore asserts that because he did not sign the mortgage, it is void in its entirety. Gilmore is mistaken.

¶9 Joint tenants have the right to encumber their individual interests. See **Wood v. Milin**, 134 Wis. 2d 279, 284, 397 N.W.2d 479 (1986); **Nelson v. Albrechtson**, 93 Wis. 2d 552, 563, 287 N.W.2d 811 (1980). In other words,

³ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Dorothy could mortgage her one-half interest if she so desired, and Gilmore's signature would not be required in that situation because he would not be a grantor.⁴ Multiple signatures are only necessary with respect to a single joint tenant's conveyance when that tenant is a married person attempting to alienate his or her interest in a homestead. *See* WIS. STAT. § 706.02(1)(f); ***State Bank of Drummond v. Christophersen***, 93 Wis. 2d 148, 156-57, 286 N.W.2d 547 (1980). Thus, as noted, the circuit court by Judge McMahon previously deemed only Dorothy's half-interest subject to the mortgage.⁵ Stated another way, though the mortgage was in fact invalid as to Gilmore and his interest in the property, it was nevertheless valid as to Dorothy and her interest.⁶

¶10 With that valid mortgage, Green Tree was entitled to repayment of the amount it loaned to Dorothy, and it was allowed to seek foreclosure as a means of repayment. Gilmore cannot recover the payment Joiner made to satisfy the foreclosure judgment by claiming Dorothy's mortgage was invalid, because it was not invalid.

⁴ Of course, if both tenants wanted to grant a mortgage against the entire property, then, under WIS. STAT. § 706.02(1)(d), both would have to sign the conveyance.

⁵ We do not have the record from the earlier cases to review the reasoning behind any prior decisions, but we note that conveyances may be reformed. *See* WIS. STAT. § 706.04.

⁶ When Dorothy died, Gilmore acquired her interest in the property as the surviving joint tenant, but that interest was subject to the mortgage. *See* WIS. STAT. § 700.24; ***Northern State Bank v. Toal***, 69 Wis. 2d 50, 57, 230 N.W.2d 153 (1975) (“The effect of [§ 700.24] is to avoid a severance of the joint tenancy when the enumerated liens are placed upon the property, but the liens remain in force against the surviving joint tenant.”).

¶11 Further, the voluntary payment doctrine applies to Joiner’s payment. “[A] person cannot recover money that he or she has voluntarily paid with full knowledge of all of the facts ... [and] no action will lie to recover the voluntary payment.” *Putnam v. Time Warner Cable of SE Wis.*, 2002 WI 108, ¶13, 255 Wis. 2d 447, 649 N.W.2d 626 (citation omitted). There is no allegation that Joiner was unaware of the facts in this situation. The voluntary payment is not recoverable.

¶12 Finally, we agree that any tort claims are barred by the statute of limitations. Gilmore’s amended complaint alleged that Green Tree “in knowingly refusing to take corrective action with respect to the defective mortgage and knowingly accepting full payment of said invalid mortgage ... acted maliciously toward [Gilmore] or acted in an intentional disregard of the rights of [Gilmore].” Thus, Gilmore alleged intentional, personal torts. At the time Gilmore commenced his action, personal torts were governed by a two-year statute of limitations. *See* WIS. STAT. § 893.57 (2007-08);⁷ *see also Turner v. Sanoski*, 2010 WI App 92, ¶4, 327 Wis. 2d 503, 787 N.W.2d 429.

¶13 Gilmore’s amended complaint alleged he gave actual notice of the defective mortgage on August 25, 2005, and the record indicates that Joiner satisfied the judgment of foreclosure on or before June 8, 2007. Gilmore’s current case was not commenced until June 25, 2009, outside the statute of limitations for both claims. However, even if the statute of limitations did not bar the tort claims,

⁷ This statute of limitations was later expanded to three years. *See* 2009 Wis. Act 120, § 1; WIS. STAT. § 893.57 (2009-10). However, that change first applied to injuries occurring on February 26, 2010. *See* 2009 Wis. Act 120, § 2; WIS. STAT. § 991.11.

we note that they are premised on the invalidity of the entire mortgage which, as we have seen, is not the case.

By the Court.—Order affirmed.

This opinion shall not be published. See WIS. STAT. RULE 809.23(1)(b)5.

